

1 **STATE OF NEW JERSEY**
2 **BUREAU OF SECURITIES**
3 **P.O. Box 47029**
4 **Newark, New Jersey 07101**
5 **(973) 504-3600**

6 In the matter of)

7 UBS WARBURG LLC)
8 677 Washington Boulevard)
9 Stamford, Connecticut 06901)
10 CRD # 7654)

11 UBS PAINEWEBBER INC.)
12 1285 Avenue of the Americas)
13 New York, New York 10019)
14 CRD # 8174,)

15 Respondents.

CONSENT ORDER

16 WHEREAS, UBS PaineWebber Inc. ("UBS PaineWebber") has been registered as a
17 broker-dealer in the State of New Jersey since January 1, 1961; and

18 WHEREAS, UBS Warburg LLC ("UBS Warburg") has been registered as a broker-dealer
19 in the State of New Jersey since August 18, 1992; and

20 WHEREAS, for purposes of this Order, PaineWebber, UBS PaineWebber and UBS
21 Warburg will be collectively referred to as UBS or the Firm, except in circumstances where
22 PaineWebber, UBS PaineWebber or UBS Warburg are specifically referenced.

23 WHEREAS, coordinated investigations into the Firm's activities in connection with certain
24 of its equity research practices during the period of approximately 1999 through 2001 have been
25 conducted by a multi-state task force and a joint task force of the U.S. Securities and Exchange
26 Commission ("SEC"), the New York Stock Exchange ("Exchange"), and the National Association
of Securities Dealers ("NASD") (collectively, the "regulators"); and

WHEREAS, the Firm has advised regulators of its agreement to resolve the issues raised in
the investigations relating to its research practices; and

WHEREAS, the Firm agrees to implement certain changes with respect to its research

1 practices to achieve compliance with all regulations and any undertakings set forth or incorporated
2 herein governing research analysts, and to make certain payments; and

3 WHEREAS, the Firm elects to permanently waive any right to a hearing and appeal under
4 N.J.S.A. 49:3-58(c) with respect to this Consent Order (the "Order");

5 NOW, THEREFORE, the Chief of the Bureau of Securities, as administrator of the
6 Uniform Securities Law (1997), L. 1997, c.276, N.J.S.A. 49:3-47 et seq., hereby enters this Order:

7 **I. JURISDICTION/CONSENT**

8 The Firm admits the jurisdiction of Bureau of Securities, neither admits nor denies the
9 Findings of Fact and Conclusions of Law contained in this Order, and consents to the entry of this
10 Order by the Chief of the Bureau of Securities.

11 **II. FINDINGS OF FACT**

12 **A. Background and Jurisdiction**

- 13 1) UBS Warburg became a member organization of the Exchange on September 6, 1985. It is
14 principally owned by UBS AG (UBS AG was formed through the June 1998 merger of
15 Union Bank of Switzerland with Swiss Bank Corporation) and is engaged in the business of
16 global investment banking and securities. UBS Warburg also provides services on a
17 worldwide basis, including investment banking, securities trading and principal
18 investments, and asset management. The principal office of UBS Warburg is located at 677
19 Washington Boulevard, in Stamford, Connecticut.
- 20 2) PaineWebber Inc. ("PaineWebber"), founded in 1879, was a full-service securities firm
21 located in New York, and became a member of the Exchange on November 17, 1982. The
22 services provided by PaineWebber, on a global basis, included investment banking,
23 research, trading, investing on a principal basis, and asset management.
- 24 3) On November 3, 2000, UBS AG purchased PaineWebber and PaineWebber became known
25 as UBS PaineWebber. UBS PaineWebber is indirectly owned by UBS AG. As part of the
26 merger, PaineWebber banking and research activities were shifted to UBS Warburg LLC,

1 and some investment bankers and research analysts previously employed by PaineWebber
2 became employees of UBS Warburg LLC. Since the merger, UBS PaineWebber is
3 principally engaged in the business of servicing retail investors and no longer employs
4 equity investment bankers or research analysts. UBS PaineWebber's principal office is
5 located at 1285 Avenue of the Americas, New York, New York.

- 6 4) UBS AG has offices in over 50 countries, employing approximately 69,500 people, 35,000
7 of whom work for UBS PaineWebber or UBS Warburg. UBS Warburg has 90 stock
8 exchange memberships in 30 countries and the firm's 500 equity research analysts cover
9 about 3,300 companies world-wide.
- 10 5) UBS Warburg and UBS PaineWebber are registered with the Exchange, SEC, NASD and
11 with all 50 states, the District of Columbia and Puerto Rico.

12 **B. Overview**

- 13
- 14 1) This action concerns the research and investment banking activities at UBS Warburg during
15 the period July 1, 1999 through June 30, 2001 as well as the research and investment
16 banking activities at PaineWebber from July 1, 1999 until its merger with UBS AG on
17 November 3, 2000 (the "relevant periods").
- 18 2) During the relevant period, as set forth below, the Firm sought and did investment banking
19 business with many companies covered by the Firm's Research Department. Research
20 analysts were encouraged to participate in investment banking activities and that was a
21 factor considered in the analysts' compensation. In addition, the decision to initiate and
22 maintain research coverage of certain companies was in some cases coordinated with the
23 Investment Banking Department and influenced by investment banking interests.
- 24 3) As a result of the foregoing, as set forth below, certain research analysts at the Firm were
25 subject to investment banking influences and conflicts of interest between supporting the
26 investment banking business at the Firm and publishing objective research.

- 1 4) As set forth below, the Firm had knowledge of these investment banking influences and
2 conflicts of interest, yet failed to establish and maintain adequate policies, systems and
3 procedures with respect to research analysts that were reasonably designed to detect and
4 prevent those influences or manage those conflicts.

5 **C. The Role of the Research Analyst**

- 6 1) Research analysts were responsible for providing analyses of the financial outlook of
7 particular companies in the context of the business sectors in which those companies
8 operate and the securities markets as a whole.
- 9 2) The Firm publishes research on publicly traded companies based upon analysts' examining,
10 among other things, financial information contained in public filings, questioning company
11 management, investigating customer and supplier relationships, evaluating companies'
12 business plans and the products or services offered, building financial models, and
13 analyzing competitive trends.
- 14 3) After synthesizing and analyzing this information, analysts produced research in the form
15 of full reports and more abbreviated formats that typically contained a rating, a price target,
16 and a summary and analysis of the factors that generated the rating and/or price target. The
17 Firm then distributed its analysts' research reports to the Firm's institutional clients, to the
18 Firm's sales force and to retail clients upon request. Research reports were also made
19 available to third party vendors, such as Bloomberg and First Call, who then made the
20 reports available to subscribers to those vendors. In addition, the rating, but not the analysis
21 contained in the research report, was published on Internet websites such as Multex, for
22 viewing by the investing public. Similarly, UBS Warburg posted on its website (and
23 provided in hard copy if requested), monthly summaries concerning the companies covered
24 by its research analysts, the ratings issued, and any ratings changes from the previous
25 month. These summaries did not include any of the analyses contained in the actual
26 research reports.

- 1 4) Analysts were required according to UBS Warburg policy to submit any proposed rating
2 upgrades or downgrades and initiations of coverage to an Investment Review Committee
3 (“IRC”) that consisted of compliance, institutional sales, equity capital markets and
4 research department personnel. The IRC reviewed analysts’ reports and approved rating
5 and target changes as well as initiations of coverage.
- 6 5) Nevertheless, analysts were sometimes able to upgrade or downgrade ratings by requesting
7 and receiving approval of one of several designated members of Research Management,
8 who were also members of the IRC, rather than the full IRC, whenever that change in rating
9 was based upon breaking news. Because Firm analysts sometimes changed their ratings
10 based upon breaking news, upgrades or downgrades were authorized without the approval
11 of the full IRC in nearly one-third of the instances in which ratings were changed during the
12 Relevant Period.
- 13 6) Analysts also made themselves available to the Firm’s institutional and retail sales force to
14 answer questions about the sector and the covered companies. In addition, analysts
15 provided periodic research updates to the Firm’s sales force through “morning calls” or
16 “morning notes,” which are daily pre-market opening discussions of the market sectors and
17 specific covered companies. Analysts also provided research updates through “blast” e-
18 mails and voice messages, which typically provide a rating and a more abbreviated analysis
19 than what is contained in a research report.
- 20 7) During the Relevant Period, analysts were expected to make independent determinations
21 regarding coverage, stock price targets and ratings whether to buy, sell or hold certain
22 stocks, without consideration of their research reports’ potential impact upon Firm
23 investment banking business or the business of Firm investment banking clients.
- 24 8) In the 1990’s the importance of research issued by analysts increased as a result of the
25 dramatic growth in the number of individual investors and the availability of online trading.
26 Research coverage became a marketing tool, and issuers sometimes chose an investment

1 bank based upon the expectation that a certain analyst would cover the company's stock
2 favorably.

- 3 9) As the performance and coverage of research analysts became increasingly integral to the
4 awarding of investment banking business, the Firm encouraged its research analysts to
5 become more involved in investment banking activities, including marketing securities
6 issued by investment banking clients (primarily to the Firm's institutional clients) and
7 soliciting investment banking business.

8 **D. Research Analyst Participation in Investment Banking Activities**

- 9 1) The Investment Banking Division at the Firm advised corporate clients and helped them
10 execute various financial transactions, including the issuance of stock and other securities.
11 The Firm frequently served as one of the underwriters in initial public offerings ("IPOs") –
12 the first public issuance of stock of a company that has not previously been traded – and
13 follow-on offerings of securities.
- 14 2) During the relevant period, investment banking was an important source of revenues and
15 profits for UBS Warburg. UBS Warburg's investment banking department reported global
16 revenues of \$1.369 billion in 1999, \$1.602 billion in 2000 and \$1.369 billion in 2001,
17 representing nearly 15% of UBS Warburg's global revenues during that time period.
- 18 3) In addition to performing research functions, some of the Firm's research analysts
19 identified companies as prospects for investment banking services, participated in "pitches"
20 of the Firm's investment banking services to companies, and participated in "roadshows"
21 and other activities in connection with the marketing of underwriting transactions. At
22 times, Firm research analysts were involved in meetings between companies, prior to their
23 IPO's, and some of the Firm's institutional customers who had expressed an interest in
24 purchasing shares in those IPOs. These meetings would take place in various cities all over
25 the country in order to accommodate the institutional customers and were commonly
26 known in the industry as "analyst roadshows."

- 1 4) During these roadshows, the analyst would discuss the issuer with the institutional
2 customers and would frequently arrange "one on one" meetings between company
3 executives and managers of institutional clients who had expressed interest in investing.
4 These roadshows were considered to be a service provided by the Firm to both its
5 institutional clients as well as its investment banking clients.
- 6 5) Research analysts also participated in commitment committee and due diligence activities
7 in connection with underwriting activities and assisted the Investment Banking Department
8 in providing merger and acquisition and other advisory services to companies.
- 9 6) The interactions between investment bankers and certain research analysts during the
10 Relevant Period, at times impacted the independence of those analysts' as they became
11 increasingly involved in the Firm's efforts to secure investment banking business. As a
12 result, an environment was created that may have led certain analysts to believe that they
13 were expected to initiate and maintain positive research about Firm clients.

14
15 **E. Participation in Investment Banking Activities was a Factor in Evaluating and**
16 **Compensating Research Analysts**

- 17 1) The compensation system at the Firm provided an incentive for research analysts to
18 participate in investment activities and to assist in generating investment banking business
19 for the Firm.
- 20 2) The performance of research analysts was evaluated by Research Management through an
21 annual review process and analysts' bonuses were determined through this process, unless
22 an analyst had a guaranteed bonus set by contract in advance. The guaranteed bonuses for
23 the Firm's top analysts were frequently in the millions of dollars while the base salary was
24 typically in the \$125,000 to \$150,000 range.

- 1 3) In addition to these guaranteed bonuses, six PaineWebber analysts were explicitly
2 guaranteed "investment banking bonuses", meaning that those analysts were entitled to
3 some portion of certain investment banking fees earned by PaineWebber.
- 4 4) For example, two PaineWebber analysts were promised compensation equal to 15% of the
5 underwriting management fees earned in their respective sectors. In addition to the bonuses
6 paid to those analysts pursuant to PaineWebber's annual review process, those two analysts
7 received an additional \$125,000 and \$135,000, respectively, for the year 2000, because of
8 the investment banking fees earned by PaineWebber in their respective sectors.
- 9 5) When UBS Warburg acquired the research and investment banking operations of
10 PaineWebber in November, 2000, the Firm removed the direct link between investment
11 banking revenues and analyst compensation.
- 12 6) The UBS annual evaluation process included an evaluation of each analyst's contribution to
13 the Firm's investment banking business as a factor in determining bonus compensation.
- 14 7) Each year, prior to bonuses being paid, UBS conducted a comprehensive evaluation process
15 that rated each analyst's performance and assigned analysts rankings in one of four
16 quartiles. As part of that process, analysts submitted self-evaluations, and other UBS
17 employees with whom the analyst had had significant contact were also asked to submit
18 evaluations, including investment bankers.
- 19 8) In describing the analysts' performance, the UBS bankers frequently included comments
20 relating to the analyst's abilities to attract and/or maintain investment banking clients.
- 21 9) For example, an investment banker at UBS Warburg evaluated one analyst as "the best
22 business builder in research I have ever known."
- 23 10) Similarly, Research Management considered investment banking contributions as a
24 component of analysts' performance evaluations. The Head of UBS Warburg's Research
25 Division evaluated that same analyst as the "most prolific analyst at the firm when it comes
26 to generating investment banking revenues" and that he "manages the tightest coordination

1 between research and [the Corporate Finance Division] of any sector.” This evaluation was
2 included in the section of the performance review entitled “Accomplishment/Strengths.”

3 11) Furthermore, the Head of UBS Warburg’s Research Division, who was ultimately
4 responsible for evaluating analysts and determining the exact amount of their bonus
5 compensation, referenced analysts’ contributions to investment banking business as one
6 factor in the evaluation of their performance.

7 12) The Firm also specifically requested that analysts, in writing their own self-evaluations,
8 include, among other criteria, an assessment of their contribution to the Firm’s Investment
9 Banking Department. This led to a perception among analysts that contribution to
10 investment banking was a factor in compensation.

11 13) In response to this request, one analyst described his own performance for the Firm by
12 highlighting his involvement with several investment banking deals done by the Firm
13 during the previous year. The analyst then boasted that he was responsible for generating
14 \$15 million in investment banking revenue for the Firm during that time.

15 **F. Investment Banking Interests Influenced the Firm’s Decisions to Initiate and**
16 **Maintain Research Coverage**

17 1) In general, the Firm determined whether to initiate and maintain research coverage based
18 upon investor interest in a company or based upon investment banking considerations, such
19 as attracting companies to generate investment banking business or maintaining a positive
20 relationship with existing investment banking clients.

21 2) As a matter of practice, the Firm initiated coverage on companies that engaged the Firm in
22 an investment banking transaction and maintained coverage for a period of time beyond the
23 transaction.

24 3) Research analysts were aware that, in certain circumstances, their positive and continued
25 coverage of particular companies was an important factor for the generation of investment
26 banking business. Thus, some research analysts and investment bankers coordinated the

1 initiation and maintenance of research coverage based upon, among other things,
2 investment banking considerations.

3 4) For example, analysts were required to seek authorization from Research Management prior
4 to dropping coverage of a company, unless the reason for dropping coverage was due to the
5 departure of the covering analyst. However, when the company involved was an
6 investment banking client, the analyst was also expected to consult with the investment
7 banking personnel responsible to that client.

8 5) Additionally, according to an e-mail by UBS Warburg Head of Global Technology
9 Investment Banking, it was an implicit condition in the UBS Warburg investment banking
10 agreements that UBS Warburg would continue to provide research coverage of its clients
11 for a period of time following a transaction. Such implied promises to investment banking
12 clients impacted the Research Department's authority to make its own independent
13 determinations concerning the continuation of coverage.

14 6) When a UBS Warburg analyst informed the Head of the Research Department that he
15 intended to drop coverage of a particular company, he was asked whether there was any
16 "banking relationship" and was told to "check with" the banker who worked with that
17 company.

18 7) Although coverage of the company was dropped in that instance, the lead banker of the
19 technology group at UBS Warburg reminded the research analyst and Research
20 Management of the implicit promise made during pitch meetings that coverage would be
21 maintained for a significant period of time: "The problem is that many companies . . . in
22 asking for credentials for a pitch will ask directly if we are meeting our research obligations
23 to the companies we bank. They generally expect an IPO fee to justify coverage for three
24 years . . ."

25 8) In another instance, when a UBS Warburg research analyst informed his banking
26 counterpart, that he intended to drop coverage of four biotechnology companies, the banker

1 forwarded that message to a member of Investment Banking Management who sent an e-
2 mail to the analyst stating that he wished “to have the opportunity to discuss future potential
3 revenue opportunities from these clients” before coverage was dropped.

4 9) The Investment Banking Department also sometimes had an impact upon determinations
5 made by analysts regarding the initiation of coverage. When investment bankers became
6 aware of opportunities to cultivate investment banking business, they sometimes suggested
7 to the analyst in that sector that coverage should be initiated.

8 10) For example, a Firm investment banker sent an e-mail to a Firm research analyst indicating
9 that a company with whom he had discussed investment banking business had asked “if
10 there was an interest by UBS Warburg to cover them from a research stand point.” The
11 banker went on to say that he believed that “the timing is good” for initiation of research
12 coverage of the company and offered to set up a meeting between the company and the
13 analyst.

14 11) Similarly, a Firm analyst informed his banking counterparts that they should wait to call a
15 company to discuss a potential investment banking deal until “after I pick up coverage.”

16 **G. The Firm’s Pitch Materials Contained Discussions of Research Coverage**

17 1) During the relevant period, research coverage was an important factor considered by
18 companies in selecting a firm for an investment banking transaction.

19 2) Certain analysts understood that the issuance of positive research about an issuer was a pre-
20 condition to the Firm’s obtaining the issuer’s banking business.

21 3) In competing for investment banking business from prospective issuers, the Firm typically
22 sent investment bankers to meet with company management in order to persuade the
23 company to select the Firm as one of the underwriters in a contemplated transaction.
24 Research analysts often accompanied bankers on these “pitch” meetings. At these
25 meetings, Firm investment bankers would present their level of expertise in the company’s
26

1 sector and discuss their previous experience with other companies, as well as their view of
2 the company's merits and likelihood of success.

3 4) In some instances, the research analyst's coverage and impact on the market place
4 concerning companies under coverage was a component of the pitch presented by the Firm.
5 As a result of these presentations, certain issuers selected an investment bank because of the
6 reputation of the analyst that would cover the company's stock and the issuer's belief that
7 the coverage would be positive.

8 5) Furthermore, certain research analysts who covered the company's sector often worked
9 with investment bankers to prepare the Firm's pitch presentation and attended the pitch
10 meeting.

11 6) In preparation for each presentation, the investment bankers, sometimes with an analyst's
12 input, prepared a "pitch book" that was distributed at the meeting and contained a summary
13 of the Firm's presentation.

14 7) Some pitch books contained information relating to the company, its competition, the sector
15 in which it operated and the nature of the services the Firm could provide to the company
16 and its shareholders after the completion of a potential offering. Additionally, Firm pitch
17 books sometimes contained implicit representations that the Firm would continue to
18 provide service to the issuer after the offering by providing research coverage about the
19 company.

20 8) Some pitch books contained information indicating that a specific analyst would cover the
21 company and included data demonstrating how that analyst's positive comments about
22 other companies in the sector had had a direct positive impact upon the stock prices of those
23 companies.

24 9) For example, the pitch book presented to JDS Uniphase by PaineWebber, discussed the
25 impact that PaineWebber research had on covered stocks by including a graphic depicting
26 the performance of stocks on the Firm's "Buy List" as opposed to stocks on the Firm's

1 “Attractive List” and “Neutral List.” At the top of the graphic, PaineWebber quoted a
2 report from Reuters which stated, “Shares of semiconductor companies specializing in
3 chips for the communications market rose on Thursday after PaineWebber published a
4 report citing the sector’s growth prospects.”

5 10) Similarly, in a pitch book presented to Avant Immunotherapeutics, Inc., PaineWebber
6 presented a slide entitled “Demonstrated Strength in Equity Trading and Research.” One of
7 the sub-topics on the slide stated, “Buy and attractive recommendations have outperformed
8 the S&P 500 by 84 percentage points for the period 1/90 through 12/99” while “Sell and
9 unattractive ratings have underperformed the S&P 500 by 361 percentage points for the
10 period 1/90 through 12/99.”

11 11) Because analysts often participated in the Firm’s efforts to win investment banking
12 business, analysts were sometimes subjected to competing pressures after a stock became
13 publicly traded. The type of information contained in the pitch books, such as the examples
14 above, implied to issuers that the Firm would provide positive research coverage if selected
15 for an investment banking transaction, and that such coverage could result in rising stock
16 prices for those companies.

17 **H. Research Analysts Rarely Issued Neutral or Negative Ratings**

18 1) During the relevant period, PaineWebber’s rating system allowed research analysts to
19 assign one of four ratings to a stock: “Buy”, defined as total return expected to exceed that
20 of the S&P 500 by 20 percentage points or more over the next 12 months; “Attractive”, 12
21 month total return potential that is 10-20 percentage points greater than the market’s;
22 “Neutral”, 12 month total return potential within 10 percentage points of the market’s;
23 “Unattractive”, expected to underperform the market by more than 10 percentage points on
24 a total return basis over the next 12 months.

25 2) During the relevant period, UBS Warburg’s rating system differed slightly from
26 PaineWebber’s and allowed research analysts to assign one of five ratings to a stock:

1 “Strong Buy”, defined as greater than 20% excess return potential; “Buy”, positive excess
2 return potential; “Hold”, low excess return potential; “Reduce”, negative excess return
3 potential; “Sell”, greater than 20% negative excess return potential. All of these ratings
4 related to a 12 month time horizon.

5 3) During the relevant period, the level of the price target and the strength of the
6 recommendation placed on a stock by covering analysts sometimes had a significant impact
7 on the stock price. Investment bankers and issuers, being fully aware of the potential
8 impact of analysts’ recommendations, were motivated to seek research coverage containing
9 positive recommendations.

10 4) In fact, certain analysts considered the investment banking implications for the Firm when
11 contemplating issuing even a neutral rating about an investment banking client. For
12 example, a member of Equity Sales Management, sent an e-mail to one of UBS Warburg’s
13 telecom analysts stating “The salesforce is extremely frustrated with your research, price
14 targets, ratings They feel that you’re being somewhat flippant and not taking
15 responsibility for your recommendations and for having lost hundreds of millions of dollars
16 for people.” The analyst responded that he would never utilize a Hold rating on a stock
17 unless one of two conditions occurred: “1) if I believe the company is about to go
18 bankrupt; 2) if there is no investment banking business to be had there.”

19 5) Notwithstanding that PaineWebber had four available ratings and UBS Warburg had five,
20 the Firm’s research analysts rarely issued ratings other than “Strong Buy” and “Buy” on the
21 stocks of investment banking clients. Out of several thousand companies covered by UBS
22 Warburg during the relevant period, UBS Warburg issued only seven “Hold” ratings and
23 two “Sell” ratings on companies with which it had an investment banking relationship.

24 6) Similarly, from July 1, 1999 until the time of the merger, PaineWebber issued only sixteen
25 “Neutral” ratings and five “Unattractive” ratings on companies with which it had an
26 investment banking relationship.

I. In Certain Instances, the Firm Published Exaggerated or Unwarranted Research

- 1) On several occasions, the conflicts of interest discussed above resulted in analysts publishing ratings and/or recommendations that were exaggerated or unwarranted, and/or contained opinions for which there was no reasonable basis. The following are examples of how these conflicts affected the research:
- 2) In April of 1998, UBS Warburg served as the lead manager on an IPO for Triangle Pharmaceuticals ("Triangle") and received \$1.8 million in investment banking fees.
- 3) Notwithstanding a market capitalization value of approximately \$352,000,000, in November of 1999, Triangle had yet to earn any revenue. Rather, investor optimism for the stock was based upon the anticipated approval by the Food and Drug Administration ("FDA") of several new drugs, including its "lead HIV drug", Coactinon.
- 4) In a research report issued on October 8, 1999, the UBS Warburg research analyst who covered Triangle issued a research report that maintained a "Buy" rating while relaying news to investors that a study of the drug Coactinon had proved "inconclusive." The analyst also wrote that the form of testing used by Triangle to gain approval from the FDA had been used before but "had been in less favor recently," and that accordingly it "is unclear what the FDA's requirements will now be" for testing the drug.
- 5) On December 10, 1999, the FDA informed the company that it would require an additional round of testing, which would cause at least a substantial delay, and perhaps ultimately a cancellation, of the release and sale of the drug. As a result the stock price fell more than \$3 -- or 23% -- from \$15.63 to \$12.00 on the date of the announcement.
- 6) On that same day, the analyst published a new research report in which she relayed the news to investors but maintained her "Buy" rating, based in part, according to the report, upon the analyst's belief that a different drug in development by Triangle was the company's "most important near-term opportunity."

- 1 7) The analyst spoke to the UBS Warburg sales force before the market opened following
2 Triangle's announcement of the FDA's decision and made a statement in form or in
3 substance that the FDA's action had been an anticipated possibility notwithstanding the
4 analyst's "Buy" rating on the stock.
- 5 8) Following that call, a member of UBS Warburg's Equity Trading Management contacted
6 the analyst by e-mail and expressed disappointment that the analyst anticipated that the
7 FDA might take this action but had failed to adequately emphasize that possibility to the
8 sales force.
- 9 9) The analyst responded that her failure to emphasize negative information regarding
10 Triangle was, at least partially, a result of the analyst's allegiance to the investment banking
11 client: "Triangle is a very important client of [the firm]. We could not go out with a big
12 research call trashing their lead product, although we had a feeling the FDA might balk.
13 Had we been right or wrong, it would have been a disaster. I just wanted the salesforce to
14 know we were not surprised, and that where appropriate we had had some conversations
15 with the buy-side. Sorry this was not conveyed."
- 16 10) Similarly, in September 1999, UBS Warburg acted as a co-lead underwriter of Interspeed's
17 IPO and received approximately \$700,000 in investment banking fees as a result.
- 18 11) In October 1999, the analyst initiated coverage on Interspeed with a "Buy" rating and a \$15
19 price target and maintained that position for several months. On January 3, 2000, the
20 Firm's analyst received an e-mail from a junior analyst who asked what to do if
21 Interspeed's annual report reflects inventory and a sales breakout which "differ materially
22 from what we have in the model." The junior analyst also remarked that Interspeed should
23 "get new auditors, their cash flow statement doesn't add up."
- 24 12) That same day, the analyst issued a research report stating the Interspeed had fallen
25 "dramatically short on the top line" in the prior quarter "due to various consumer financing
26

1 and delivery issues.” Additionally, the analyst issued the “Buy” rating in spite of the fact
2 that the stock price had risen above the analyst’s price target.

3 13) Two days later, on January 5, 2000, the analyst instructed a member of the Firm’s sales
4 force, “Don’t put people into Interspeed – very risky.” Nevertheless, the analyst maintained
5 his Buy rating on the stock.

6 14) Approximately 15 minutes later, the recipient of that e-mail replied, asking “so why is ispd
7 [stock symbol for Interspeed] a short?” The analyst replied, “Just lumpy revenue, some
8 stuffing of channel, creative accounting.”

9 15) The analyst’s reference to “customer financing and delivery issues” in his January 3rd report
10 should have more fully described his concern that Interspeed was suffering from lumpy
11 revenue or channel stuffing.

12 16) A week after that, on January 11, 2000, the analyst received a question from an institutional
13 sales force member asking about Interspeed. He responded, “BE CAREFUL about being
14 long Interspeed. They will report a great number for the December quarter, at least on the
15 surface of things, but the quality of that number is not necessarily self-evident.” (emphasis
16 in the original).

17 17) On February 4, 2000, the UBS Warburg analyst issued another research report following
18 Interspeed’s announcement of its fourth quarter results, which exceeded the analyst’s
19 expectations. In that report, the analyst reiterated his “Buy” rating and raising his price
20 target from \$15 to \$28.

21 18) On March 20, 2000, while the analyst still maintained his “Buy” rating and \$28 price target
22 and with the stock price exceeding that target, the analyst sent an e-mail to UBS Warburg’s
23 sales force informing them that another company had developed a product to compete with
24 Interspeed. One of the members of the sales force responded, “This sounds like a short . . .
25 correct? (Off the record, of course).” The analyst responded, “YES.” However, the
26 analyst still maintained the “Buy” rating.

1 19) On May 31, 2000, the analyst sent an e-mail to two institutional customers saying that "The
2 two shorts of the group I would suggest are (1) [another issuer] and (2) Interspeed. I'd be
3 wary of shorting any of the others." Nevertheless, the analyst still maintained his "Buy"
4 rating on Interspeed.

5 20) On July 21, 2000, the analyst dropped the rating on Interspeed from a "Buy" to a "Hold".

6 **J. UBS Warburg Received and Made Payments for Research**

7 1) UBS Warburg received payments from the lead manager of offerings in which UBS
8 Warburg did not participate for the issuance of research during the relevant time period.

9 2) During the relevant period, UBS Warburg received a payment of \$100,000 from an outside
10 firm in connection with the offering of Flextronics International, Ltd. The cover letter
11 enclosing the check indicated that the check was a "special research check." However,
12 UBS Warburg failed to disclose in its research reports concerning Flextronics that it had
13 received the payment, nor did it disclose the source or amount of the payment.

14 3) During the relevant period, UBS Warburg also received a payment from an outside firm in
15 the amount of approximately \$113,000 in connection with the offering of Atmel, Inc. The
16 cover letter enclosing the check stated that the check represented "guaranteed economics
17 for research." However, UBS Warburg failed to disclose in its research reports concerning
18 Atmel that it had received the payment, nor did it disclose the source or amount of the
19 payment.

20 4) During the relevant period, UBS Warburg also paid a "research fee" of \$150,000 at the
21 direction of the issuer, to two broker-dealers in conjunction with the underwriting
22 transaction of Netopia, Inc. in which UBS Warburg was the lead-manager. However, UBS
23 Warburg did not take steps to ensure that this broker-dealer disclosed in its research reports
24 that it had been paid to issue research. Further UBS Warburg did not disclose or cause to
25 be disclosed the details of these payments.
26

- 1 5) During the relevant period, UBS Warburg also made several payments totaling
2 approximately \$283,000, at the direction of the issuer, for "research" to broker-dealers in
3 conjunction with an underwriting transaction of Espeed, Inc., in which UBS Warburg was
4 the lead manager. However, UBS Warburg did not take steps to ensure that this broker-
5 dealer disclosed in its research reports that it had been paid to issue research. Further UBS
6 Warburg did not disclose or cause to be disclosed the details of these payments.

7 **K. The Firm Failed To Adequately Supervise Its Research and Investment**
8 **Banking Departments**

- 9 1) While one of the roles of research analysts was to produce objective research, the Firm also
10 encouraged them to participate in investment banking activities. As a result of the
11 foregoing, these analysts were subject to investment banking influences and conflicts of
12 interest between supporting the Firm's investment banking business and publishing
13 objective research.
- 14 2) The Firm had knowledge of these investment banking influences and conflicts of interest
15 yet failed to manage them adequately to protect the objectivity of its published research.
- 16 3) The Firm failed to establish and maintain adequate policies, systems and procedures
17 reasonably designed to ensure the objectivity of its published research. Although the Firm
18 had some policies governing research analyst activities during the relevant period, these
19 policies were not adequate to fully address the conflicts of interest that existed.

20 **III. CONCLUSIONS OF LAW**

- 21 1) The Bureau of Securities has jurisdiction over this matter pursuant to N.J.S.A. 49:3-47 et seq.,
22 and more specifically N.J.S.A. 49:3-66.
- 23 2) N.J.S.A. 49:3-58(a) states that the Bureau Chief may by order deny, suspend, or revoke any
24 registration if he finds: (1) that the order is in the public interest; and (2) that the applicant or
25 registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or
26 director, any person occupying a similar status or performing similar functions, or any person

1 directly or indirectly controlling the broker-dealer or investment adviser: (vii) has engaged in
2 dishonest or unethical practices in the securities, commodities, banking, insurance or
3 investment advisory business, as may be defined by rule of the bureau chief; or (xi) has failed
4 reasonably to supervise his agents if he is a broker-dealer or issuer; the agents of a broker-
5 dealer or issuer for whom he has supervisory responsibility, or his employees who give
6 investment advice if he is an investment adviser.

- 7 a. UBS engaged in the acts and practices that created or maintained inappropriate
8 influence by the Investment Banking Department over research analysts, therefore
9 imposing conflicts of interest on its research analysts, and failing to manage these
10 conflicts in an adequate or appropriate manner. This conduct was a violation of
11 N.J.S.A. 49:3-58(a)(2)(vii);
- 12 b. UBS issued research reports that were affected by the conflicts of interest imposed
13 on its research analysts as described above. This conduct was a violation of
14 N.J.S.A. 49:3-58(a)(2)(vii);
- 15 c. UBS made payments for research to other broker-dealers not involved in
16 underwriting transactions when the Firm knew that these payments were made, at
17 least in part, for research coverage, and by failing to disclose or cause to be
18 disclosed in offering documents or elsewhere the fact of such payments. This
19 conduct was a violation of N.J.S.A. 49:3-58(a)(2)(vii);
- 20 d. UBS received payments in conjunction with underwriting transactions from outside
21 entities for research issued without disclosing receipt of those payments to the
22 public as required by Section 17(b) of the Securities Act of 1933, as amended. This
23 conduct was a violation of N.J.S.A. 49:3-58(a)(2)(vii).
- 24 e. UBS failed to establish and maintain adequate policies, systems and procedures for
25 supervision and control of the Research and Investment Banking Departments
26 reasonably designed to detect and prevent the foregoing investment banking

1 influences and failed to manage the conflicts of interest to assure compliance with
2 applicable securities laws and regulations, as required by N.J.S.A. 49:3-58(a)(2)(xi).

- 3 3) The Chief of the Bureau of Securities finds the following relief appropriate and in the public
4 interest.

5 IV. ORDER

6 On the basis of the Findings of Fact, Conclusions of Law, and UBS Warburg's and UBS
7 PaineWebber's consent to the entry of this Order, for the sole purpose of settling this matter, prior to a
8 hearing and without admitting or denying any of the Findings of Fact or Conclusions of Law,

9 IT IS HEREBY ORDERED:

- 10 1) This Order concludes the investigation by the Bureau of Securities and any other action that the
11 Bureau of Securities could commence under the Uniform Securities Law (1997), L. 1997, c.276,
12 N.J.S.A. 49:3-47 et seq. on behalf of the State of New Jersey as it relates to the Firm, relating to
13 certain research practices at the Firm described herein.
- 14 2) The Firm will CEASE AND DESIST from violating the Uniform Securities Law (1997), N.J.S.A.
15 49:3-47 et seq. and will comply with the Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq.,
16 in connection with the research practices referenced in this Order and will comply with the
17 undertakings of Addendum A, incorporated herein by reference.
- 18 3) This Order is not intended by the Chief of the Bureau of Securities to subject any Covered
19 Person to any disqualifications under the laws of any state, the District of Columbia or Puerto
20 Rico (collectively, "State"), including, without limitation, any disqualifications from relying
21 upon the State registration exemptions or State safe harbor provisions. "Covered Person"
22 means the Firm, or any of its officers, directors, affiliates, current or former employees, or other
23 persons that would otherwise be disqualified as a result of the Orders (as defined below).
- 24 4) The SEC Final Judgment, the NYSE Stipulation and Consent, the NASD Letter of Acceptance,
25 Waiver and Consent, this Order and the order of any other State in related proceedings against
26 the Firm (collectively, the "Orders") shall not be a ground to deny, suspend or revoke the

broker-dealer, agent, investment adviser or investment adviser representative registration of any Covered Person pursuant to N.J.S.A. 49:3-58, shall not be a ground for denial or revocation of the transactional or securities exemptions from registration in N.J.S.A. 49:3-50, and shall not be a ground to issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any securities registration statement pursuant to N.J.S.A. 49:3-64.

- 5) For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against the Firm including, without limitation, the use of any e-mails or other documents of the Firm or of others regarding research practices, or limit or create liability of the Firm, or limit or create defenses of the Firm to any claims.
- 6) Nothing herein shall preclude the State of New Jersey, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Bureau of Securities and only to the extent set forth in paragraph 1 above, (collectively, "State Entities") and the officers, agents or employees of State Entities from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against the Firm in connection with certain research practices at the Firm.

V. MONETARY SANCTIONS

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

1. As a result of the Findings of Fact and Conclusions of Law contained in this Order, the Firm shall pay a total amount of \$80,000,000.00. This total amount shall be paid as specified in the SEC Final Judgment as follows:
 - a. \$25,000,000 to the states (50 states, plus the District of Columbia and Puerto Rico) (the Firm's offer to the state securities regulators hereinafter shall be called the "state settlement offer"). Upon execution of this Order, the Firm shall pay the sum of \$648,335.00 of this amount to State of New Jersey, Bureau of Securities as a civil monetary penalty pursuant to N.J.S.A. 49:3-70.1, to be deposited in the

1 Securities Enforcement Fund, N.J.S.A. 49:3-66.1. The total amount to be paid by
2 the Firm to state securities regulators pursuant to the state settlement offer may be
3 reduced due to the decision of any state securities regulator not to accept the state
4 settlement offer. In the event another state securities regulator determines not to
5 accept the Firm's state settlement offer, the total amount of the State of New Jersey
6 payment shall not be affected, and shall remain at \$648,335.00;

7 b. \$25,000,000 as disgorgement of commissions, fees and other monies as specified
8 in the SEC Final Judgment;

9 c. \$25,000,000, to be used for the procurement of independent research, as described
10 in the SEC Final Judgment;

11 d. \$5,000,000, to be used for investor education, as described in Addendum A,
12 incorporated by reference herein.

- 13 2. The Firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or
14 indemnification, including but not limited to payment made pursuant to any insurance policy,
15 with regard to all penalty amounts that the Firm shall pay pursuant to this Order or section II of
16 the SEC Final Judgment, regardless of whether such penalty amounts or any part thereof are
17 added to the Distribution Fund Account referred to in the SEC Final Judgment or otherwise
18 used for the benefit of investors. The Firm further agrees that it shall not claim, assert, or apply
19 for a tax deduction or tax credit with regard to any state, federal or local tax for any penalty
20 amounts that the Firm shall pay pursuant to this Order or section II of the SEC Final Judgment,
21 regardless of whether such penalty amounts or any part thereof are added to the Distribution
22 Fund Account referred to in the SEC Final Judgment or otherwise used for the benefit of
23 investors. The Firm understands and acknowledges that these provisions are not intended to
24 imply that the State of New Jersey would agree that any other amounts the Firm shall pay
25 pursuant to the SEC Final Judgment may be reimbursed or indemnified (whether pursuant to an
26

1 insurance policy or otherwise) under applicable law or may be the basis for any tax deduction
2 or tax credit with regard to any state, federal or local tax.

- 3 3. If payment is not made by the Firm or if the Firm defaults in any of its obligations set forth in
4 this Order, the Chief of the Bureau of Securities may vacate this Order, at his sole discretion,
5 upon 10 days notice to the Firm and without opportunity for administrative hearing.

6 **VI. GENERAL PROVISIONS**

7 This Order and any dispute related thereto shall be construed and enforced in accordance with,
8 and governed by, the laws of the State of New Jersey.

9 The parties represent, warrant and agree that they have received independent legal advice from
10 their attorneys with respect to the advisability of executing this Order.

11 Dated this 8th day of September, 2003.

12 By Order of the Chief of the Bureau of Securities

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14 By: Franklin L. Widmann
15 Franklin L. Widmann
16 Chief, Bureau of Securities
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CONSENT TO ENTRY OF CONSENT ORDER
BY UBS SECURITIES LLC, f/k/a UBS WARBURG LLC

UBS SECURITIES LLC, formerly known as UBS WARBURG LLC, hereby acknowledges that it has been served with a copy of this Consent Order, has read the foregoing Consent Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

UBS SECURITIES LLC admits the jurisdiction of the Bureau of Securities, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Consent Order; and consents to entry of this Consent Order by the Chief of the Bureau of Securities as settlement of the issues contained in this Consent Order.

UBS SECURITIES LLC states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

UBS SECURITIES LLC understands that the State of New Jersey may make such public announcement of this Consent Order and the subject matter thereof as the State of New Jersey may deem appropriate.

Robert Dinerstein represents that he/she is Managing Director of UBS SECURITIES LLC and How Julein S represents that he/she is Managing Director of UBS SECURITIES LLC and that, as such, they have been authorized by UBS SECURITIES LLC to enter into this Consent Order for and on behalf of UBS SECURITIES LLC.

Dated this 3rd day of September, 2003.

UBS Securities LLC
f/k/a UBS Warburg LLC

By: Robert Dinerstein

Title: Managing Director and
Global General Counsel

SUBSCRIBED AND SWORN TO before me
this 27th day of August, 2003

Cynthia M. Walshe
Notary Public

My commission expires:

8/31/08

CYNTHIA M. WALSH
Notary Public, State of Connecticut
No. 119780
My Commission Expires Aug. 31, 2008

UBS Securities LLC
f/k/a UBS Warburg LLC

By: [Signature]

Title: Managing Director

SUBSCRIBED AND SWORN TO before
me this 3rd day of September, 2003

[Signature]
Notary Public

My commission expires:

LAURIE Y. INGRAM
Notary Public, State of Connecticut
No. 129311
My Commission Expires July 31, 2006

1 **CONSENT TO ENTRY OF CONSENT ORDER**
2 **BY UBS FINANCIAL SERVICES INC., f/k/a/ UBS PAINEWEBBER INC.**

3 UBS FINANCIAL SERVICES INC., formerly known as UBS PAINEWEBBER INC., hereby
4 acknowledges that it has been served with a copy of this Consent Order, has read the foregoing
5 Consent Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

6 UBS FINANCIAL SERVICES INC. admits the jurisdiction of the Bureau of Securities,
7 neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Consent
8 Order; and consents to entry of this Consent Order by the Chief of the Bureau of Securities as
9 settlement of the issues contained in this Consent Order.

10 UBS FINANCIAL SERVICES INC. states that no promise of any kind or nature whatsoever
11 was made to it to induce it to enter into this Consent Order and that it has entered into this Consent
12 Order voluntarily.

13 UBS FINANCIAL SERVICES INC. understands that the State of New Jersey may make such
14 public announcement of this Consent Order and the subject matter thereof as the State of New Jersey
15 may deem appropriate.

16 Herbert F. Jurek represents that he/she is General Counsel of
17 UBS FINANCIAL SERVICES INC. and Robert Silver represents that he/she is
18 Executive Vice-President of UBS FINANCIAL SERVICES INC. and that, as such, they have
19 been authorized by UBS FINANCIAL SERVICES INC. to enter into this Consent Order for and on
20 behalf of UBS FINANCIAL SERVICES INC.

21 Dated this 27 day of August, 2003.

22 UBS Financial Services Inc.
23 f/k/a UBS PaineWebber Inc.

24 By: [Signature]

25 Title: General Counsel

26 SUBSCRIBED AND SWORN TO before me
this 27 day of August, 2003

Notary Public

My commission expires:

UBS Financial Services Inc.
f/k/a UBS PaineWebber Inc.

By: [Signature]

Title: Exec Vice President UBS
Financial Services Inc.

SUBSCRIBED AND SWORN TO before
me this 28 day of August, 2003

[Signature]
Notary Public

My commission expires: 10/3/07

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CONNNA NAPORANO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires October 3, 2007